

## **Neocleous and another v Rees [2019] EWHC 2462 (Ch)**

Following a dispute over a right of way, the parties' solicitors agreed in an exchange of emails (constituting a single email chain) to compromise the dispute by the defendant (R) transferring to the claimants (N) a small piece of land adjacent to Lake Windermere.

07 October 2019

### **A name automatically added to an email by a 'footer' was signed for the purposes of satisfying section 2 of the Law of Property (Miscellaneous Provisions) Act 1989.**

#### **Facts**

Following a dispute over a right of way, the parties' solicitors agreed in an exchange of emails (constituting a single email chain) to compromise the dispute by the defendant (R) transferring to the claimants (N) a small piece of land adjacent to Lake Windermere in consideration of £175,000 to be paid by N to R. N subsequently sought specific performance of the compromise agreement.

R argued that the emails exchanged between the parties' solicitors did not satisfy the requirement in section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 (the 1989 Act) that a contract for the sale of an interest in land has to be signed by or on behalf of each party. This was because the purported signature by R's solicitor on an email setting out the main terms of the settlement agreed between the parties arose from the automatic generation of his name, occupation, role and contact details at the foot of the email.

#### **Issue**

Was the email from R's solicitor signed for the purposes of section 2 of the 1989 Act?

#### **Decision**

A name in the 'footer' of an email amounted to a signature for the purposes of section 2 of the 1989 Act as long as the name was applied with authenticating intent. In this case, therefore, R's solicitor had signed the relevant email on behalf of R.

Although under the email account's settings the relevant words were added automatically to every email without any action or intention on the solicitor's part, the setting up of that rule in the first place had involved the conscious action of a person. It was difficult therefore to distinguish between a name and other details added pursuant to a general rule from the situation where the sender manually adds those details to every email, especially as the recipient of the email has no way of knowing whether the details were added automatically or manually. Looked at objectively, the presence of the name indicated a clear intention to associate the author with the email.

It was also relevant that R's solicitor had inserted the words "Many thanks" before the automatic footer in his email as this strongly suggested that the solicitor was relying on the automatic footer to sign off his name.

#### **Points to note/consider**

1. R had argued that signing a document requires the writing of the signatory's name or mark in his/her own hand, even though the

writing may be inserted electronically (e.g. by a hand-written signature being scanned and the digital document that results being inserted in to the document). This argument was rejected by the judge in favour of the broader and simpler test of whether the signatory's name was applied to the document with authenticating intent? This mirrors the approach of the recently published Law Commission report on the electronic execution of documents which is at pains to stress that it does not focus on nor favour a particular type of technology.

2. This case is a reminder of the importance of ensuring that all pre-contract exchanges of emails which purport to set out the terms of a proposed disposition of property are headed 'subject to contract' to avoid the possibility of the parties inadvertently becoming contractually obliged to proceed with a transaction at a time when they may not yet be in a position to do so.

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